



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FDP VIRGINIA, INC.
FOR
FDP BRAKES
VPDES Permit No. VAR05
Storm Water Registration No. VAR052300**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and FDP Virginia, Inc., regarding FDP Brakes, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "2014 Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014, and which expired on June 30, 2019. FDP applied for coverage under the Permit and was issued Registration No.

VAR052300 on August 11, 2015.

3. "2019 Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2019 and expires June 40, 2024. FDP applied for coverage under the Permit and was re-issued coverage under Registration No. VAR052300 on August 18, 2020.
4. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means the discharge of a pollutant.
8. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "Facility" or "Site" means FDP Brakes located at 1076 Airport Road, Tappahannock, Virginia, from which discharges of stormwater associated with industrial activity occur.
10. "FDP" means FDP Virginia, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. FDP is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9
VAC 25-31-10.

14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
16. "Registration statement" means a registration statement for coverage under a storm water general permit.
17. "Regulation" means "The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity," 9 VAC 25-151-10, *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. FDP owns and operates the Facility located at 1076 Airport Road, Tappahannock, Virginia, which discharges stormwater associated with industrial activity. FDP is a drum and disk brake manufacturing business that manufactures, packages, and ships brakes to numerous large automotive parts suppliers around the country.

2. The 2014 Permit allowed and the 2019 Permit allows FDP to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary of the Rappahannock River, in strict compliance with the terms and conditions of the Permit.
3. The unnamed tributary of the Rappahannock River is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
4. The unnamed tributary is located in the Rappahannock River Basin. During the 2018 305(b)/303(d) Integrated Water Quality Assessment, the tributary was not assessed for any designated use; it was therefore considered a Category 3A waterbody. The tributary would be considered a Tier 1 water due to its ephemeral nature. The Facility is located within the study area of the shellfish TMDL for the Upper Rappahannock River Watershed (approved by the EPA on August 10, 2010 and by the SWCB on December 13, 2010). The Facility was not addressed in the TMDL. The Chesapeake Bay TMDL was approved by the EPA on December 29, 2010. The TMDL allocates loads for total nitrogen, total phosphorus, and total suspended solids to protect the dissolved oxygen and SAV criteria in the Chesapeake Bay and its tidal tributaries. The Facility was not specifically addressed. The wasteload allocations for all regulated stormwater dischargers in the Rappahannock River mesohaline estuary are aggregated.
5. On August 11, 2015, FDP received coverage under the 2014 Permit and DEQ assigned it registration number VAR052300. The 2014 Permit expired June 30, 2019. In order to continue coverage under the 2019 Permit, a new registration statement was due at DEQ's Piedmont Regional Office by May 2, 2019. FDP did not submit a complete registration statement to DEQ's PRO by May 2, 2019.
6. Part II.M of the 2014 Permit states, "If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board. The Board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit."
7. 9 VAC25-151-60.B.1.a states, "Any owner that was authorized to discharge under the industrial stormwater general permit that became effective on July 1, 2014, and that intends to continue coverage under this general permit shall submit a complete registration statement to the board on or before May 2, 2019."
8. On February 25, 2020, DEQ issued NOV No. W2020-02-P-0007 to FDP for failing to submit a registration statement by May 2, 2019 and for discharging stormwater associated with industrial activity without permit coverage.
9. On April 22, 2020, DEQ and FDP had a telephone meeting to discuss the NOV. FDP submitted a complete registration statement to DEQ on April 22, 2020.

10. On July 2, 2020, DEQ received the permit fee from FDP and began processing the complete permit application.
11. On August 18, 2020, DEQ issued FDP 2019 Permit coverage under the same registration number, VAR052300.
12. FDP did not have coverage under the 2019 Permit and did not have authorization to discharge stormwater associated with industrial activity from July 1, 2019 to August 18, 2020.
13. 9VAC25-31-120.B.1 states, "Dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit."
14. Va. Code § 62.1-44.5(A) states, "[e]xcept in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses..."
15. 9 VAC 25-31-50 (A) states, "[e]xcept in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses."
16. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
17. The Department has issued coverage under no permits or certificates to FDP other than under VPDES Permit No. VAR052300.
18. Based on the results of the DEQ file reviews and discussions with FDP, the Board concludes that FDP has violated conditions 2014 Permit Part II.M, and 9 VAC 25-151-60.B.1.a, 9 VAC 25-31-120.B.1, 9 VAC 25-31-50.A, and Va. Code § 62.1-44.5(A) as noted in paragraphs C(1)-(15) of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders FDP, and FDP agrees to:

Pay a civil charge of \$11,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

FDP shall include its Federal Employer Identification Number (FEIN) (-) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, FDP shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of FDP for good cause shown by FDP, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2020-02-P-0007 dated February 25, 2020. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, FDP admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. FDP consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. FDP declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by FDP to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. FDP shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. FDP shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FDP shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and FDP. Nevertheless, FDP agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after FDP has completed all of the requirements of the Order;

- b. FDP petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to FDP.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve FDP from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by FDP and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of FDP certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind FDP to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of FDP.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, FDP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26th day of January, 2021.


James Golden, Regional Director
Department of Environmental Quality

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FDP Virginia, Inc. voluntarily agrees to the issuance of this Order.

Date: 11/4/20 By: James Terrell, Plant Manager
(Person) (Title)
FDP Virginia, Inc.

Commonwealth of Virginia
City/County of ESSEX

The foregoing document was signed and acknowledged before me this 4th day of
November, 2020, by JAMES TERRELL who is
PLANT MANAGER of FDP Virginia, Inc. on behalf of the corporation.

Doris Z. Gonie
Notary Public

117944
Registration No.

My commission expires: 11-30-22

Notary seal:



